

AIA[®] Document A101[™] – 1997

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a STIPULATED SUM*

AGREEMENT made as of the day of in the year of
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

STATE OF SOUTH CAROLINA

and the Contractor:
(Name, address and other information)

The Project is:
(Name and location)

OSE PROMULGATION OF CONTRACT REVISIONS

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This document is posted for the purpose of facilitating discussion of existing OSE required contract revisions. The OSE recognizes that this document will not be available for use after May 31, 2009.

The Architect is:
(Name, address and other information)

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, 00501-OSE, Conditions of the Contract for Construction (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in Article 8 of this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results indicated by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement of the Work shall be established in the SE-390, "Notice to Proceed." The Notice to Proceed will be issued to the Contractor in writing, no less than seven (7) days prior to the Date of Commencement. Nothing in this provision precludes the contractor from commencing work immediately after receipt of the Notice to Proceed.

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| | |

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.4 The Contractor acknowledges and recognizes that the Agency is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. It is hereby mutually agreed by and between the parties that time shall be an essential part of the Agreement and the Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Final Completion of any portion of the Work within the Contract Time, the Agency will sustain damages and loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Agency and the Contractor agree as set forth below in this Paragraph 3.4.

§ 3.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Time for Completion allowed in the Agreement, the Agency shall be entitled to retain or recover from the Contractor and its Surety, as Step One liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the specified or adjusted time of performance and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Agency will incur as a result of delayed completion of the Work: (Insert a breakdown of per diem amounts shown on the SE-330.)

§ 3.4.2 If Final Completion of the Work is not achieved within the time allowed in the SE-330 for work after Substantial Completion, and if the Agency and OSE have not granted any extension of time, the Contractor shall owe to the Agency, not as a penalty but as Step Two liquidated damages, the sum stated below as Step Two liquidated damages for each and every partial or total calendar day of delay in Final Completion: (Insert a breakdown of per diem amounts shown on the SE-330.)

§ 3.4.3 The Agency may deduct liquidated damages described in Subparagraphs 3.4.1 and 3.4.2 from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Agency by the Contractor or its Surety at the demand of the Agency.

§ 3.5 The Contractor shall be entitled to an Early Completion Award in the amount of per day if the Contractor achieves Substantial Completion of the entire Work before the original Time for Completion; provided, however, that the Award shall not be payable until the time of final payment. If the Contractor has earned an Award with respect to the Work, the Agency shall have the right, at the Agency's election, to deduct from the Award any amounts due from the Contractor to the Agency. The Contractor shall include a provision in each of its subcontracts in excess of ("Major Subcontracts") that requires the Contractor to pay such Major Subcontractor a share of any Award that bears the same ratio to the total Award as the amount of the Major Subcontract bears to the Contract Sum. In no event shall the Contractor be awarded any portion of the Award if the entire Work is not Substantially Complete on or before expiration of the original Contract Time for Substantial Completion. (Insert the amount of any Early Completion Award per diem as shown on the SE-330 and the minimum dollar value for any Subcontractor to be eligible for a pro rata share of the Award.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

§ 4.3 Unit prices, if any, are as follows:

| Description | Units | Price (\$ 0.00) |
|-------------|-------|-----------------|
| | | |

§ 4.3.1 Unit prices are set forth in the "Schedule of Unit Prices" attached hereto and made a part hereof as Exhibit (). Such unit prices are considered complete and include: (1) all materials, equipment, labor, delivery, installation, overhead, and profit; and, (2) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon on Applications for Payment Payment, including all supporting documentation, submitted to the Agency and the Architect A/E by the Contractor and Certificates Certifications for Payment issued by the Architect, A/E, the Owner Agency shall make progress payments payment on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.

§ 5.1.3 An Application for Payment, including all supporting documentation, for the period of time established in Subparagraph 5.1.2 shall be received by the A/E and the Agency not later than () days after the end of the period for which the Contractor is making application for payment. Payment on approved amounts shall be made by the Agency not later than twenty-one (21) days after the A/E and the Agency receive the Application for Payment. (Insert the expected number of days required by the Contractor to prepare its Applications for Payment.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Each Application for Payment shall include such other information, documentation, and materials as the Agency or the A/E may require to substantiate the Contractor's entitlement to payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of (). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ();
- .3 Subtract the aggregate of previous payments made by the Owner; and

- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to ~~the full amount ninety-six and one half percent (96.5%) of the Contract Sum, less such amounts as the Architect/A/E shall determine for incomplete and unacceptable Work, retainage applicable to such work and work, unsettled claims, claims, Step One liquidated damages then due, and (Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)~~ anticipated Step Two liquidated damages, if any.
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.8.1 Refer to Subparagraphs 9.6.2 and 9.8.5 of the General Conditions. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of: (1) any of the Agency's rights to retainage in connection with other payments to the Contractor; or, (2) any other right or remedy that the Agency has under the Contract Documents, at law or in equity.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

~~§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

§ 5.2.2

Final payment shall be made within twenty-one (21) days from the date the Agency (or A/E) receives the final undisputed Application for Payment, including all supporting documentation, from the Contractor. All conditions stipulated in the General Conditions shall have been met before final payment is made.

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997. A201-1997, as amended.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-1997~~, A201-1997, as amended.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

() per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

Refer to Subparagraph 9.6.2 of the General Conditions.

§ 7.3 The Owner's representative is:

(Name, address and other information)

§ 7.4 The Contractor's representative is:

(Name, address and other information)

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

§ 7.6.1 Contractor shall not incur any expense chargeable to the Agency on or about the Work of this Agreement until the Notice to Proceed is issued.

§ 7.6.2 The Contractor represents and warrants the following to the Agency (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Agency to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

§ 7.6.2.1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

§ 7.6.2.2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;

§ 7.6.2.3 that it is authorized to do business in the State of South Carolina and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;

§ 7.6.2.4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;

§ 7.6.2.5 that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents; and

§ 7.6.2.6 that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project; and it will perform the Work with the care, skill, and diligence of such a contractor. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Agency is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§ 7.6.3 The Agency reserves the right, pursuant to Article 7 of the General Conditions to modify the Work of the Contractor. The Agency has been certified to approve Change Orders to the Contract, where the value of each procurement is or less.

(Insert the amount of Agency's Construction Change Order Certification)

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document ~~A101-1997~~ A101-1997 as amended by 00501-OSE and as otherwise stated herein.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document ~~A201-1997~~ A201-1997 as amended.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows

| Document | Title | Pages |
|------------------|---|--------------|
| <u>00811-OSE</u> | <u>Standard Supplemental Conditions</u> | <u>20</u> |

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows: *(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Title of Specifications exhibit:

| Document | Title | Pages |
|------------------|--|--------------|
| <u>00201-OSE</u> | <u>Standard Supplemental Instructions to Bidders</u> | <u>9</u> |
| <u>00501-OSE</u> | <u>Standard Modifications to AIA A101-1997</u> | <u>4</u> |

| Section | Title | Pages |
|----------------|--------------|--------------|
|----------------|--------------|--------------|

§ 8.1.5 The Drawings are as follows, and are dated unless a different date is shown below: *(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Title of Drawings exhibit:

| Number | Title | Date |
|--------|-------|------|
| | | |

§ 8.1.6 The Addenda, if any, are as follows:

| Number | Date | Pages |
|--------|------|-------|
| | | |

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Table of Contents

Invitation for Construction Bids (SE-310)

Instructions to Bidders (AIA Document A701-1997 Edition)

Contractor's Bid (Completed SE-330)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)